

MA 125620, J

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/2/08

New York Burger I, Inc.,
New York Burger II, Inc.,
New York Burger Co. LLC,
New York Burger Co. Franchising LLC,
New York Burger Co. Brands LLC,
Madeline Polley, and Spiros Zisimatos,

Plaintiffs,

- against -

New York Steak & Burger Co Inc.,

Defendant.

08 CV 01809 (VM) (HP)

STIPULATION

WHEREAS the plaintiffs together are the owners, licensors, and licensees of the trade/service mark "New York Burger Co."; and

WHEREAS the plaintiffs own and operate two restaurants in the City of New York and market food items for retail sale and are actively marketing franchise restaurant opportunities all under the name "New York Burger Co."; and

WHEREAS the defendant heretofore intended to open a restaurant in the City of New York under the name "New York Steak & Burger Co."; and

WHEREAS the plaintiffs have initiated this civil action alleging that the defendant's use of the name "New York Steak & Burger Co." infringes upon the legal rights of the plaintiffs; and

WHEREAS the parties desire to avoid the expenses of litigation, with neither side admitting the validity of the claims or defenses of the other,

IT IS NOW HEREBY STIPULATED by and between the undersigned counsel for all of the parties hereto that:

1. The defendant will immediately change its name, signage, and all other marketing, advertising, promotional, publicity, and packaging material so as to remove the name

"New York Steak & Burger Co." and in no event will use in any way, method, mode, means, or manner any colorable imitation of the name "New York Burger Co."

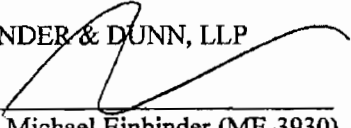
2. The defendant will, within ten days of the date hereof, effectuate a change of its corporate name from "New York Steak & Burger Co. Inc." to such other and different name that is not a colorable imitation of the name "New York Burger Co." and will within fifteen days provide proof of such change to counsel for the plaintiffs.

3. Upon the receipt of proof of the defendant's compliance with the preceding provisions, the plaintiffs shall prepare, execute, serve, and file, pursuant to Rule 41 of the Federal Rules of Civil Procedure, a notice of dismissal without prejudice, with each party to bear its own costs of this action. The United States District Court for the Southern District of New York will retain jurisdiction of this matter for the purposes of enforcement of this stipulation.

4. If the defendant does not comply with the provisions of paragraphs 1 and 2 above, then the plaintiffs may, without notice, enter the consent judgment annexed hereto including a monetary award in the amount of \$25,000 as reasonable agreed-upon attorney's fees and not as a penalty.

Dated: New York, New York
February 22, 2008

EINBINDER & DUNN, LLP

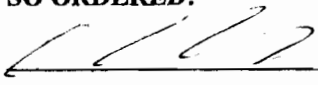
By: 
Michael Einbinder (ME-3930)
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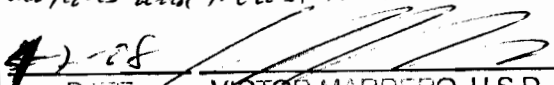
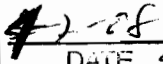
NEW YORK STEAK & BURGER CO INC.

By: 
Steven LoCastro,


(title)

SO ORDERED:


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SO ORDERED: *The Clerk of Court is directed to withdraw any pending motions and to close this case.*

DATE  VICTOR MARRERO, U.S.D.J.